

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 95-41

May 24, 1995

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: B. Allan Benson, Acting Associate General Counsel

SUBJECT: Litigation of Salting Cases

In Memorandum OM 94-100, guidance was provided regarding the handling of all salting cases. As noted by that memorandum, a concern for EAJA liability led us to conclude that in merit cases involving union organizers which are appealable to the Fourth, Sixth or Eighth Circuits, no complaint should issue. Additionally, you were directed not to issue complaints in merit cases involving union members, like those in Town & Country Electric v. NLRB, No. 92-3911 (8th Cir. Aug. 31, 1994), and appealable to the Eighth Circuit.

Since that time, the Supreme Court has accepted certiorari of Town & Country which has resulted in our reassessment of this policy. After carefully reviewing the merit cases that are being held in abeyance, the effect of the Supreme Court's acceptance of certiorari on EAJA liability and the delay in safeguarding employee rights under the Act, we feel the Regions should now proceed in some of the cases held in abeyance.

The following chart depicts whether you should proceed in merit salting cases. Essentially, it indicates that, regardless of the circuit to which it is appealable, if a merit case involves any discriminatees who are non-paid union officials or union members, employees or applicants for employment who do not have an arrangement with a union or possess the other specific characteristics of union members found unprotected by the 8th Circuit in Town & Country, you should issue complaint and proceed to trial absent a settlement.

Memorandum OM 95-41

PROCEDURAL GUIDE FOR MERIT SALTING CASES

MERIT CASES APPEALABLE TO THE:

	4TH CIR	6TH CIR	8TH CIR	ALL OTHER CIRS
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ONLY Paid
Union Organizers

HOLD

HOLD

HOLD

PROCEED

ONLY Paid
Union Organizers &
Town & Country Union
Members/Employees/
Applicants

HOLD

HOLD

HOLD

PROCEED

ONLY Town & Country
Union Members/ Employees/
Applicants

PROCEED

PROCEED

HOLD

PROCEED

All Other Combinations
of Union Organizers and
Members/Employees/
Applicants

PROCEED

PROCEED

PROCEED

PROCEED

If you have any questions concerning these matters, please contact Deputy to the Assistant General Counsel Richard Hardick or your Assistant General Counsel.

B. A. B.